

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

UNITED STATES OF AMERICA, :

Plaintiff, Case No. 3:08-cr-036

- vs - : District Judge Walter Herbert Rice
Magistrate Judge Michael R. Merz

KEVIN R. TINCER,

Defendant. :

ORDER FOR ANSWER

Defendant has filed an Amended Motion to Vacate, Set Aside, or Correct a Sentence, pursuant to 28 U.S.C. §2255 (Doc. No. 79). The matter is before the Court for initial consideration under Rule 4 of the Rules Governing §2255 Motions. The matter has been referred to United States Magistrate Judge Michael R. Merz pursuant to the General Order of Assignment and Reference for the Dayton location of court.

It does not plainly appear from the face of the motion, the annexed exhibits, and the prior proceedings in the case that Defendant is not entitled to relief. Accordingly, it is hereby ORDERED that the United States Attorney shall, not later than September 20, 2012, file an answer conforming to the requirements of Rule 5 of the Rules Governing §2255 Cases.

Specifically, said answer shall respond to each allegation made in the Motion, raise any affirmative defenses available to the United States, and state whether Defendant has previously received an evidentiary hearing on any of the matters he now raises or whether he is entitled, in the Government's view, to an evidentiary hearing in this proceeding.

Defendant may, not later than twenty-one days after the Answer is filed, file and serve a reply or traverse to the Answer. If the Government files a motion to dismiss, Defendant's time to file a memorandum in opposition will likewise be twenty-one days from service, as provided in S. D. Ohio Civ. R. 7.2(a).

August 20, 2012.

s/ *Michael R. Merz*
United States Magistrate Judge